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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,545	07/23/2003	John Phillip Myers	MYE002-089	7507

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EXAMINER

HANSEN, JAMES ORVILLE

ART UNIT PAPER NUMBER

3637

DATE MAILED: 02/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/624,545	<b>Applicant(s)</b> MYERS ET AL.	
	<b>Examiner</b> James O. Hansen	<b>Art Unit</b> 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on August 25, 2005 & December 15, 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 1-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 27-30, 32-36 and 38 is/are rejected.
- 7) ☒ Claim(s) 31 and 37 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 1-26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on August 25, 2005.

2. Applicant's election with traverse of Group II invention in the reply filed on August 25, 2005 is acknowledged. The traversal is on the ground(s) that a full examination of the subject matter of the Group I invention would encompass a search of the subject matter of the Group II invention. This is not found persuasive because the inventions are distinct for the reasons previously set forth and have acquired a separate status in the art as represented by the different classification.

The requirement is still deemed proper and is therefore made FINAL.

3. Applicant's election without traverse of the Group B species in the reply filed on December 15, 2005 is acknowledged. After further review, it is noted that the two distinct species as identified by applicant, more accurately represent the depicted embodiments and therefore examination on the merits will be based on this grouping, i.e., Species B constituting figures 1-4, 6, 8 & 9.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 27 is rejected under 35 U.S.C. 102(b) as being anticipated by Jenkins [U.S. Patent No. 5,584,551]. Jenkins (figures 1-6) teaches of an inherent method of assembling a refrigerator cabinet including a shell (14) having first and second laterally spaced upstanding side walls (21, 22) interconnected by a top wall (20) with each of the top and side walls including an in-turned flange (such as element 86 for example via members (39, 40, 41)) that defines respective liner receiving cavities so far as broadly defined, the method of assembling comprising: attaching a base member (25 or 42) between the upstanding side walls; mounting a mullion bar (44) to divide the shell into first and second liner receiving portions (note fig. 2 for example – left and right portions); “flex loading” [viewed as flexing or deforming a member] a first liner (16) having a plurality of peripheral rim portions (fig. 2) such that at least two sides of the first liner are “flexed” to enable at least two of the plurality of peripheral rim portions to be received into respective ones of the liner receiving cavities (fig. 3 for example), while another one of the plurality of peripheral rim portions extends along a first mullion land (100); “flex loading” a second liner (17) having a plurality of peripheral rim portions (fig. 2) such that at least two sides of the second liner are “flexed” to enable at least two of the peripheral rim portions to be received into respective ones of the liner receiving cavities (same as above), while another one of the peripheral rim portions extends along a second mullion land (101); and mounting a

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mullion cover (viewed as element 94) such that a portion of the mullion cover extends over the first and second mullion lands (fig. 4) and the another ones of the peripheral rim portions, in as much as applicant depicts the claimed feature.

6. Claims 27-29, 32-35 & 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Avendano et al., [U.S. Patent No. 5,897,181]. Avendano (figures 1-20) teaches of an inherent method of assembling a refrigerator cabinet including a shell (52) having first and second laterally spaced upstanding side walls (54, 55) interconnected by a top wall (57) with each of the top and side walls including an in-turned flange (65-67) that defines respective liner receiving cavities, the method of assembling comprising: attaching a base member (154) between the upstanding side walls; mounting a mullion bar (152), so far as broadly recited, to divide the shell into first and second liner receiving portions (note fig. 13 for example – upper and lower portions); “flex loading” [viewed as flexing or deforming a member] a first liner (upper liner) having a plurality of peripheral rim portions (fig. 13) such that at least two sides of the first liner are “flexed” to enable at least two of the plurality of peripheral rim portions to be received into respective ones of the liner receiving cavities (fig. 14 for example), while another one of the plurality of peripheral rim portions extends along a first “mullion land” (viewed as the top edge of member 152 – so far as broadly recited); “flex loading” a second liner (lower liner) having a plurality of peripheral rim portions (fig. 13) such that at least two sides of the second liner are “flexed” to enable at least two of the peripheral rim portions to be received into respective ones of the liner receiving cavities (same as above), while another one of the peripheral rim portions extends along a second “mullion land” (viewed as the lower edge of member 152 – so far as broadly recited); and mounting a mullion cover (viewed as element 182) such

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that a portion of the mullion cover extends over the first and second mullion lands (fig. 13) and the another ones of the peripheral rim portions, in as much as applicant depicts the claimed feature. As to claim 28, mounting the mullion bar to the shell through a pair of attachment brackets (144). As to claim 29, creating a gap (note fig. 9) between the shell and the mullion bar and positioning at least one end portion of the mullion cover therein (note fig. 13), so far as broadly recited. As to claim 32, positioning a further one of the peripheral rim portions of the second liner along a first recessed ledge portion of the base member (viewed as the top inside edge of the base member 154) so far as broadly recited. As to claim 33, arranging a base cover (186) against a second recessed ledge portion of the base member (viewed as the bottom inside edge of the base member 154), so far as broadly recited, with the cover extending over the further one of the rim portions of the second liner and along the base member. As to claim 34, mounting the base member through a pair of attachment brackets (147) interconnecting the base member with the upstanding side walls. As to claim 35, creating a gap (fig. 9) between the shell and the base member; and positioning an end portion of a base cover in the gap (fig. 13), so far as broadly recited. As to claim 38, interconnecting the mullion bar between the upstanding side walls of the shell at a position spaced above and substantially parallel to the base member (fig. 13).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 30 & 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Avendano et al., [U.S. Patent No. 5,897,181] in view of Banicevic et al., [U.S. Patent No. 6,036,294]. Avendano teaches applicant's inventive claimed method as disclosed above, but does not show reinforcing the mullion bar with a brace or show reinforcing the base member with a brace. Banicevic is cited as an evidence reference to show that it was known in the art to incorporate a brace secured to the rear of a mullion bar (note fig. 6 assembly) in an analogous art. Accordingly, the position is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the assembly of Avendano's refrigerator so as to incorporate a brace within the mullion bar and mullion cover assembly as taught by Banicevic because this arrangement would provide reinforced support to the mullion bar and to the side walls of the shell. As to claim 36, the position is taken that one of ordinary skill in the art could reinforce the base member with a brace, in a similar manner to the mullion bar, for the reasons previously set forth. Accordingly, since the addition of a brace is not functionally related in a new or unobvious way to the member upon which it is located, the incorporation of a brace will not distinguish the invention from the prior art in terms of patentability.

***Allowable Subject Matter***

9. Claims 31 & 37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Keil et al., Jenkins et al., '536, Weaver et al., and Markley et al., describe refrigerator assembly processes and structures.

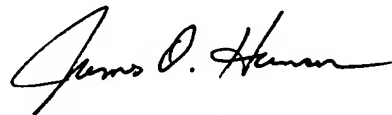
Any inquiry concerning this communication or earlier communications from the examiner should be directed to James O. Hansen whose telephone number is 571-272-6866. The examiner can normally be reached on Monday-Friday between 8-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James O. Hansen  
Primary Examiner  
Art Unit 3637

JOH  
February 13, 2006